

### **REMARKS**

This Amendment is in response to the Office Action mailed October 29, 2008. In the Office Action, claims 1-15 have been rejected. Claims 1-4 and 6-15 have been rejected under 35 U.S.C. §102(e). Claim 5 has been rejected under 35 U.S.C. §103.

Herein, claim 1 has been amended. Claims 16-22 have been added.

Applicant respectfully traverses the rejection and respectfully requests the Examiner to reconsider the allowability of the pending claims.

#### ***Request for Examiner's Interview***

On January 29, 2009, the Examiner schedule permitted the undersigned attorney to discuss the grounds for rejection with the Examiner. The issues discussed pertained to the wording "duplicative". Applicant respectfully points out that content/data can be duplicative (i.e. the same video, audio, etc.) even through different encryption schemes are used. The Examiner and her supervisor tentatively agreed and preferred clarification on those independent claims where such clarification was not present. Applicant has complied with the request through an amendment of claim 1 and respectfully points out that independent claims 6 and 15 have not been amended based on the presence of such limitations in their dependent claims. Applicant respectfully requests the Examiner to contact the undersigned attorney if, after her review, there are still questions regarding patentability. Such discussions will greatly facilitate the prosecution of this case. The undersigned attorney can be reached at the telephone number listed below.

#### ***Rejection Under 35 U.S.C. §102***

Claims 1-4 and 6-15 were rejected under 35 U.S.C. §102(e) as being anticipated by Carny (U.S Patent Publication No. 2002/0150239). Applicants respectfully traverse the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

Herein, the Office Action states that Carny discloses a method for providing content from a head-end to a digital device, where the first packet including a first packet identifier to indicate a type of data stored in a payload of the first packet and a second packet including a secondary packet identifier to indicate that the second packet includes content duplicative of content contained in the first packet and to cause the digital device to disregard content contained in the first packet." We disagree and respectfully explained to the Examiner that Carney does not provide duplicative content in the transmission. Rather, as described in detail in paragraphs [0008, 0052-0054], Carny replicates a pre-selected salient fragment into N copies, and these N

copies are stored. *See FIG. 4 of Carny*. However, each copy is encrypted with a different algorithm but only one copy of each segment is then used to construct a transmitted data/content. The transmitted data/content does not include any duplicated content.

Hence, Applicant respectfully requests the Examiner to withdraw the outstanding §102(e) rejection.

***Rejection Under 35 U.S.C. § 103***

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Carny (U.S. Publication No. 2002/0150239) in view of Monta et al. (U.S. Patent No. 7,039,048). Applicant respectfully traverses the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).*

Herein, the combined teachings of the cited references fail to describe or suggest all of the claim limitations as described above. Moreover, since claim 5 is dependent on claim 1, believed by Applicant to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. Applicant reserves the right to present such arguments in an Appeal if warranted.

Withdrawal of the §103 rejection as applied to claim 5 is respectfully requested.

***Conclusion***

Applicants respectfully request that the Examiner reconsider the rejections and issue a timely Notice of Allowance.

Respectfully submitted,

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